

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL No. 05-40033-FDS
)	
)	
HERIBERTO ARROYO)	

**DEFENDANT'S MEMORANDUM IN SUPPORT OF HIS OBJECTION
TO PSR RE: SINGLE OR MULTIPLE CONSPIRACIES**

The defendant has objected to the PSR on several grounds; this memorandum is filed in support of his objection to paragraph 68, which creates two groups from the two counts of conviction, resulting in a two level enhancement. It is the defendant's position that the two conspiracies are actually one conspiracy.

In *United States v. Cloutier*, 966 F.2d 24, 28 (1992), the First Circuit laid out the factors to be considered in determining how many conspiracies exist for double jeopardy purposes.

We consider: 1) when the drug activity occurred; 2) the locations of the drug activity; 3) the identities of the persons involved; 4) the co-conspirators' ends; 5) the means used to achieve those ends; and 6) the similarities (or differences) in the evidence used to prove the two conspiracies.

In *United States v. Morrow*, 39 F.3d 1228, 1233-34 (1st Cir. 1994), the Court, citing *Cloutier*, employed these factors in deciding that there was one conspiracy.

Further, the jury could easily find that DeLuca and Andreoni were engaged in a single continuing conspiracy embracing both of the specific frauds attempted here. It is a commonplace that a single conspiracy may embrace multiple crimes. The similarity of the frauds, the core of common participants, the common location, and the overlap in timing all make it permissible to treat the conspiracy as an unbroken one under the criteria commonly used to distinguish between single and multiple conspiracies.

Contrast *United States v. Glenn*, 828 F.2d 855 (1st Cir.1987) and *Cloutier* itself. In the case at bar the assessment of these factors

Respectfully submitted,
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By his attorney

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